

The respondent's insurance carriers couch the issue in terms of whether claimant suffered accidental injury arising out of and in the course of his employment. This is not totally accurate as the respondent employer acknowledges claimant suffered accidental injury and that injury arose out of and in the course of claimant's employment. The dispute, in this matter, exists between two (2) insurance companies; Employers Mutual Casualty (hereinafter Employers) and Northwestern National Casualty Insurance (hereinafter Northwestern). Northwestern provided coverage prior to March 1, 1993. Employers

Mutual Insurance provided coverage from March 1, 1993 forward. Claimant has alleged accidental injury on November 6, 1989 and again on June 2, 1993. The respondent does not deny claimant suffered accidental injury which arose out of and in the course of his employment. The only issue is whether the current medical treatment stems from the 1989 injury, for which Northwestern would have coverage, or the 1993 injury for which Employers Mutual would have coverage. The Administrative Law Judge elected not to decide the matter instead, finding both carriers to be jointly and severally liable for both medical and temporary total disability compensation until such time as a regular hearing is held in this matter. The Administrative Law Judge felt it necessary to provide claimant benefits of medical treatment and surgery as soon as possible. He saw no legitimate reason why the claimant should have to sit and wait while the insurance companies disputed coverage.

K.S.A. 44-534a allows appeals of disputed issues from preliminary hearings when dealing specifically with whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply. In this instance, there is no dispute claimant suffered accidental injury arising out of and in the course of his employment. The only dispute is date of accident and which insurance company should be liable for the costs of the surgery and temporary total disability compensation. The Appeals Board finds the issue in this matter is not one listed in K.S.A. 44-534a as appealable from a preliminary hearing and based upon that statute, the Appeals Board does not have jurisdiction to hear this matter.

Appeals from preliminary hearings can also be taken if it is alleged the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. See K.S.A. 44-551(b)(2)(A), as amended by S.B. 59 (1995).

It has been alleged the Administrative Law Judge erred in not allowing respondent to present evidence of whether claimant suffered accidental injury arising out of and in the course of his employment. As was stated earlier, the respondent does not dispute that claimant suffered accidental injury arising out of and in the course of his employment. The dispute is between the insurance companies as to which specific date of accident the liability for the surgery should be attached. The Administrative Law Judge, in electing to not delay claimant's medical treatment and in assessing the liability against the insurance companies jointly and severally for purpose of preliminary hearing is not acting beyond the Administrative Law Judge's jurisdiction. As such, the Appeals Board finds it does not have jurisdiction to hear this matter under either K.S.A. 44-534a or K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated November 3, 1995, remains in full force and effect and the appeal of the respondent in this matter shall be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David G. Shriver, McPherson, Kansas
James M. McVay, Great Bend, Kansas
Mel Gregory, Wichita, Kansas
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director